In the High Court of Judicature at Madras

Dated: 3.01.2006

Coram:

The Honourable Mr. Justice S.R.SINGHARAVELU

Civil Revision Petition (NPD) No. 2476 of 2004
And
C.M.P.No.18636 of 2004

R.K.Nair,
Sole Proprietor,
R.K.Engineering Enterprises
Carrying on business at
No.319, Anna Salai,
Nandanam,
Chennai 600 035. .. Petitioner/Tenant

Versus

1. Saramma George
2. Sunny George
3. Simon George
4. Renee Charles .. Respondents/Landlords

Civil Revision Petition under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, Act 18 of 1960 as amended by Act 23 of 1973, preferred against the order of eviction dated 10.03.2004 passed in RCA No.41 of 1995 on the file of VIII Court of Small Causes at Madras, confirming the order dated 23.06.1994 passed in RCOP No.2390 of 1991 on the file of XVI Court of Small Causes at Madras.

For Petitioner : Mr.P.B.Balaji

For Respondents: Mr.Adrian D.Rozario.

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ORDER

The tenant in R.C.O.P.No.2390 of 1991 has filed the present revision petition aggrieved against the order passed in R.C.A.No.41 of 1995 on the file of Rent Control Appellate Authority, VIII Court of Small Causes, Madras dated 10.03.2004.

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2. The case in brief is as follows:-

(a) Original landlord V.O.George filed the petition for eviction under section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, to evict the tenant-revision petitioner. In the petition, it is stated that the landlord is the owner of the building at door No.319, Anna Salai, Nandanam, Madras, consisting of ground + three floors. The respondent became a tenant under the landlord in respect in respect of the first shop portion on a monthly rent of Rs.700/- and it was raised in due course. The landlord, who is carrying on business in tyre retreading, sales and service of tyres and tubes in a rented premises at Door No.5, Whites Road, Second Lane, Royapettah, Chennai, for development of his business, wanted to occupy the portion let out to the tenant, which is in the Mount Road, Chennai. As the landlord is not owning any other property and the portions in the first, second and third floors are not suitable for his business, he had been requesting the respondent to vacate and hand over possession to him, to which, the tenant did not yield. The landlord issued a lawyer's notice on 18.06.1991 terminating tenancy and calling upon the tenant to deliver vacant possession by 01.08.1991. As the tenant did not vacate even thereafter, but sent a reply on 06.08.1991, the petition for eviction had been necessitated.

(b) In the counter, the respondent contended that the requirement of the landlord is mala fide. The tenant contended that the petitioner is not doing business at No.5, Whites Road, Second Lane, Royapettah, and there is no necessity for him to shift the business to any other place as Whites Road, Second Lane is famous for tyre business. The landlord, after getting huge money for vacating the premises in his occupation at Swadeshi Mitran Complex, has purchased the property near Sathyam Theatre and he is doing tyre business there. According to the tenant, the landlord is not doing any business on the date of filing of the petition for eviction. The landlord gave pinpricks and cut off water supply and shut down the flow of natural light, toilet facilities, etc., to coerce the tenant to vacate the property in his possession. Therefore, the petition is liable to be dismissed.

(c) In the additional counter, the tenant submitted that one shop portion in the ground floor of the petition premises had fallen vacant and the landlord had renewed the tenancy of another tenant in the ground floor, namely, 'Castle Furniture showroom' by increasing the rent Therefore, the claim of the landlord is not bona fide and the prayer should be rejected.

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(d) Before the Rent Controller, the landlord examined himself as P.W.1 and marked Exs. P-1 to P-23. On the side of the tenant, two witnesses were examined and Exs. R-1 to R-3 were marked. A Commissioner was appointed and his report has been marked as Ex.C-1. On a consideration of the entire oral and documentary evidence, the Rent Controller found that the case of the landlord is acceptable and the claim for eviction for owner's occupation has been prov4ed and accordingly, allowed the eviction petition granting one month's time for vacating the premises. During the pendency of the appeal, the landlord V.O.George died and his legal representatives were brought on record as respondents 2 to 5 in the appeal. On a re-appraisal of the entire evidence, the Rent Control Appellate Authority had concurred with the findings of the Rent Controller and dismissed the appeal, granting one month's time for vacating the premises.

3. The Revision arises against that order dated 10.3.2004 made in R.C.A.No.41 of 1995 by the VIII Judge, Court of Small Causes, Chennai, in R.C.O.P.No.2389 and 2390 of 1991 on the file of the XVI Judge, Court of Small Causes, Chennai, in which eviction of shop premises, at door No. 319, Anna Salai, Nandanam, Chennai 35 was claimed by one Mr.V.O.George (since deceased) on the ground of owners occupation for commercial purpose.

4. The deceased George was running a tyre company in Chennai under the name and style of Hindustan Tyres, in the Swadeshi Mitran Complex, which later on was shifted to a building in Whites Road, which was purchased in the name of his elder son Sunny George. The continuance of the said tyre company by deceased V.O.George in Whites Road building was eventually as tenant under Sunny George. Exs. P1 to P.16 are the connected records, where from there was a notice to vacate the said premises. It is in such context, the deceased George had opted to shift his Tyre business into this building belonging to him and situate at Nandanam in Mount Road Chennai, and filed these R.C.O.Ps. requiring the petition mentioned premises, only on the ground of owners occupation.

5. The appellant's contention before the Courts below was that there was no necessity for vacating the premises in Whites Road, where tyre business is going on; and even if it be so, there are quite number of premises lying vacant in the said building in the other floors and endeavor could be made to occupy the same. Both the Courts below rightly found on facts that Sunny George the elder son was the owner of the premises at Whites Road and for so many other reasons he wanted to have it vacated; and that there was no premises lying vacant in the said building for being occupied for the landlord.

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6. The next contention of the appellant/tenant in the Courts below was that according to the report of the different commissioners during the trial and first appeal some premises among the five shops in the ground floor adjoining the petition mentioned one were lying vacant upon evicting the tenants thereon and those premises could as a whole be availed of by the landlord, had he really required for shifting the tyre business into the petition mentioned area in Nandanam. Upon perusal of the Commissioner's report of 1998 during the pendency of R.C.A. proceeding, it becomes clear that shop No.2 was occupied by Size Control Cauges And Tools Pvt. Ltd., shop Nos. 3 and 4 were occupied by Castle Furnitures and that shop No.5 could not be opened as the key was said to be available with the concerned tenant himself.

7. The appellant/tenant by then at first contended that Castle Furnitures was the company owned by the landlord himself and then expressed that the landlord renewed tenancy subsequent to the filing of this petition in favour of Castle Furniture. It was further contended that yet another shop also fell vacant and was subsequent to this proceeding let out to different persons. Thus, it was made out that there was enough premises consecutively falling vacant and thus the landlord could have occupied the said premises, provided his requirement was bona fide. It was further argued that while there were four shops in the ground floor why the landlord has failed to prefer similar application against the other tenements. All these according to the counsel for appellant/tenant would go to show the requirement by the landlord as mala fide.

8. Reliance was also placed by the appellant in Mattulal v. Radhe Lal (AIR 1974 SC 1596), wherein it was held that

> " The test which has to be applied an objective test and not a subjective one and merely because a landlord asserts that he wants the nonresidential accommodation for the purpose of starting on continuing his own business, that would not be enough to establish that he requires it for that purpose and that his requirement is bona fide. The word 'required' signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show that he genuinely requires the non residential accommodation for the purpose of starting or continuing his own business."

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The above case law was later on referred to in a case reported in S.Mariappan v. Kadar Beevi (1997-3- Law Weekly 141), wherein a Single Judge of this High Court by relying upon Meenal Eknath Kshirsagar v. Traders & Agencies & Another (1996 (5) SCC 344), observed that 'the tenant cannot dictate which building the landlord should occupy, if the bona fide is proved, the choice must be given to the landlord to occupy building which will be very convenient and advantageous for him'.

9. It was already proved that there was a tyre company in existence run by the deceased George and that was in the premises of his elder son in Whites Road, Madras and as the later wanted to get it vacated, the landlord claimed a portion of his premises in Nandanam, which is a busier locality. The say that some other premises in Whites Road was lying vacant remained un-proved. Similar contention that there were other shops in the ground floor of the petition mentioned premises owned by the landlord lying vacant and those were left not occupied but only let to others is also is not sufficient in order to make the bona fide of the landlord as untrue. This is so because as held in Meenal Eknath Kshirsagar v. Traders & Agencies & Another 1996 (5) SCC 344 cited above and at page 353 of the same volume Prativa Devi v. T.V.Krishnan, option is not that of the appellant/tenant.

10. Again in order to reply the contention of Appellant/Tenant that how could the landlord let out other shops of same premises without getting them occupied for his own requirement and how could he let out to others, the learned counsel for the Respondents/landlord relied upon a decision reported in Ramkubai v. Hajarimal Dhokalchand Chandak (1999) 6 SCC 540), wherein it was observed that 'B was unemployed on the date of filing of the suit but in the meanwhile started some business and in that context, Their Lordships held that he cannot be expected to idle away the time by remaining unemployed till the case was finally decided. It was held that if the eldest son was carrying on business along with his mother, that does not mean that his need has not been established for starting his own business.'

11. Further to show the bona fide of the claim, Exs. P1 to P16 were marked and witnesses have also been examined and upon evaluation, both the courts below concurrently held in favour of the landlord. As a matter of fact in the above cited case S.Mariappan v. Kadar Beevi (1997 (3) Law Weekly 141) it was held that 'the finding regarding bona fide need is always a question of fact; when both the Authorities below have concurrently come to the correct conclusion that the claim of the landlord is bona fide, the revisional jurisdiction of this Court becomes restricted.'

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12. The next important question that arises is that upon the demise of Mr.V.O.George during the pendency of R.C.A. proceeding, the earlier eviction order passed in his favour in these R.C.O.P's on 23.6.1994 by the XVI Judge, Court of Small Causes, Chennai, will hold good, as the requirement for own occupation, on the basis of which eviction was ordered may vanish upon the demise of the said landlord. True it is that Legal Representatives were not known to the Appellant/Tenant. On 27.9.1999, the counsel for the appellant/tenant issued notice to mention the names of Legal Representatives stating the demise of the erstwhile landlord. It is in the year 2000 the Appellant filed an application to condone the delay of 474 days in filing the petition to implead them as L.Rs. of the deceased George. On 12.4.2001 the delay was condoned. In the month of June 2001 vakalat was filed for the Legal Representatives, who are the widow, two sons and their two daughters. It is by the operation by the Statute of Succession, concerned Legal Representatives were impleaded.

13. The present contention of the appellant/tenant is that the subsequent event viz., the demise of the landlord who required the premises for his own occupation for running his business, was not taken note of ; nor could it be said that the business was continued by the L.Rs. , the present Respondents, so as to say that they also are in need of the premises for own occupation of running the said tyre retreading business.

14. One cannot say that the business came to be closed soon after the demise of the erstwhile landlord. The business with its goodwill is an asset inherited by the legal heirs. The Respondent affirmed that they are continuing to do the said business. On this aspect of fact both the Courts below found concurrently in favour of the Respondents. In this regard the following observation made by this Court in Vijayaraghavan v. Mohammed Yakub Rowther (1976 I MLJ 123) is noteworthy. … the general principle actio personalis moritur cum persona … the general doctrine cannot be inducted as a matter of course … under given conditions and prescriptions as per the special enactment. The Tamil Nadu Buildings (Lease and Rent Control) Act provides for certain reliefs in favour of landlords and concurrently enables the tenants to continue in occupation of the demised premises unless they are compelled to surrender that possession by an invocation of the special law. … then such a right cannot be barely characterized as a personal right which ought to die with the person concerned. … the benefit by way of a decree which a predecessor-in-interest has secured being an incorporeal right and that right having vested in a landlord or landlady in that a decree for eviction has already been passed, cannot be divested by his or her death, as it could pass on to

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the heirs as it becomes part and parcel of the property owned by the landlord or landlady. … The respondents do assert that they want to continue the business, which their father commenced, and this aspect cannot therefore be lightly brushed aside factually. (underline now made) The concurrent finding of fact that the premises is required bona fide for purposes of business of the father cannot be interfered with or set aside by this Court." Thus, it was held that the benefit of eviction enures to the benefit of the estate and the requirement of the landlord continues even after his death.

15. In this context it is necessary to extract the provisions under Section 27 of the Tamil Nadu Act 18 of 1960 as under:

"27.Proceedings by or against legal representatives-

(1) Any applications made, appeal preferred, or proceeding taken, under this Act by or against any person, may in the event of his death, be continued by or against his legal representatives.

(2) Where any application, appeal or other proceeding could have been made, preferred or taken, under this Act by or against any person, such application, appeal or other proceeding may, in the event of his death, be made preferred or taken by or against his legal representatives."

16. The facts of the case in T.Narayanan v. Sankaranarayanan (Deceased) and others (2004-4 L.W.520) cited by the appellant/tenant may not be applicable to this case, as none of the legal representatives of the deceased in that case continued his profession as an Advocate and so the claim of requirement of the building for being used as an office of an Advocate on fact may not be required by the legal representatives who were not at all in the said profession. The facts before us are not alike. Here the Legal Representatives did not disqualify themselves from continuing the erstwhile landlord's Tyre business.

17. In fact that decision was based upon the observation made in Govind v. Dr.Jeetsingh (1988 1 SCC 198) where, pending second appeal before the High Court, wife of the landlord died, consequently, three rooms under her occupation fell vacant and so it was held that there was no mere bona fide need of the landlord as the above three rooms became vacant and it could necessarily be used only by the landlord and none else than him. There is no similarity in our case.

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18. Regarding the aspect of consideration of subsequent event of death of the erstwhile landlord who instituted the action, catina of cases was cited on both sides. Most of which were referred in Saitnagjee Purushotham & Co. Ltd., v. Vimalabai Prabhulal and others (2005) 8 SCC 252) cited on the side of the Respondents; and Kedarnath Agrawal (Dead) and another v. Dhanraji Devi (Dead) by Lrs. And another (2004)8 SCC 76) cited on the side of the appellant. The following are referred in both the above citations:

1. (1975) 1 SCC 770 (Pasupuleti Venkateswarlu's case)
2. (1981) 3 SCCC 103 (Hasmat Rai 's case)
3. (2001) 2 SCC 604 (Gaya Prasad's case)

The case of (2004) 8 SCC 76 refers to the other following case laws:-

1. (1907) 6 Cal. L.J. 74 (Ram Ratan Sahu 's case)
2. AIR 1941 FC.5, (Lachmeshwar Prasad Shukul's case)
3. (1974) 1 SCC 675 (Shikharchand Jain's case)
4. (1976) 1 SCC 194 (Rameshwar's case)
5. (1991) 3 SCC 483 (Gulabbai 's case)
6. (1992) 3 SCC 55 (Shadi Singh's case)
7. (1995) 1 SCC 410 (Super Forgings & Steels' case)
8. (1997) 9 SCC 654 (P.Sriramamurthy's case)
9. (2001) 2 SCC 762 (Lekh Raj's case)
10. (2002) 2 SCC 256 (Om Prakesh Gupta's case)

Besides the following cases referred in (2005) 8 SCC 252 cited by the landlord:-

1. (1986)3 SCC 62 (Madras Bangalore Transport Co.'s case)
2. (1995) 6 SCC 605 (G.Sridharamurti's case)
3. (1999) 6 SCC 540 (Ramkubai's case)
4. (2004) 8 SCC 490 (Pratap Rai Tanwani's case)

The other cases referred in Gaya Prasad v. Pradeep Srivastava (2001(2) SCC 604) also cited on the side of Respondents/landlords are asfollows:-

1. 1992 Supp (2) SCC 623 (Ramesh Kumar's case)
2. 1997(4) SCC 413 (Kamaleshwar Prasad's case)
3. 1997 (5) SCC 457 (Ansuyaben Kantilal Bhatt's case)

Let us now go in detail about the principles involved therein.

19. In Ram Ratan Sadhu v. Bishun Chand (1907) 6 Cal LJ 74) it was observed that 'there are certain exceptions to the general rule that a suit must be tried in all stages on the cause of action as it existed at the date of its commencement.'

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20. In Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri (AIR 1941 FC 5) the Federal Court took into account the provisions of the new Act which came into force during the pendency of appeal before the Federal Court.

21. Following Lachmeshwar Prasad law of "ancient vintage", Krishna Iyer, J. stated as follows:

> "We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is not violated, with a view to promote substantial justice - subject, or course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. … "

22. In Shikharchand Jain v. Digamber Jain (1974) 1 SCC 675)it was observed as follows:-

> "The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the court to consider changed circumstances. A court of law may take into account subsequent events inter alia in the following circumstances:

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(i) the relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or
(ii) it is necessary to take notice of subsequent events in order to shorten litigation; or
(iii) it is necessary to do so in order to do complete justice between the parties."

23. Similar guidelines were issued in Om Prakash Gupta v. Ranbir B. Goyal(2002)2 SCC 256 and the same is following:

> "The ordinary rule of civil law is that … the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise."

24. The underlining factor in the above principles is regarding cautious approach in dealing with the events subsequent to the initiation of the original proceedings. This was dealt with in Pasupuleti Venkateswarlu's case (1975) 1 SCC 770). A three Judge Bench of the The Hon'ble Supreme Court, in that case pointed out to the need for re-moulding the reliefs on the strength of subsequent events affecting cause of action in the field of rent control litigation, forewarning the adjudication very cautiously. This is what the learned Judges of the Bench said then:

> "We affirm the proposition that for making the right or re4medy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

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25. This concept of cautious cognizance laid in Pasupuleti Venkateswarlu was followed in many cases. In that cited case the plaintiff filed a suit for possession on the ground of personal requirement for starting business and an order was passed in his favour. Appeal against the said order was dismissed. Tenant filed a revision in the High Court, during which time plaintiff acquired possession of another non-residential building. Tenant moved an amendment application. High Court allowed the amendment application. Landlord challenged the same in the The Hon'ble Supreme Court by contending that the High Court had committed an error in taking cognizance of subsequent event which was "disastrous", The Hon'ble The Hon'ble Supreme Court rejected that contention.

26. The above concept was followed in Ramesh Kumar v. Kesho Ram (1992 Supp (2) SCC 723) The Hon'ble Division Bench of the Supreme Court, pointed out that 'the normal rule is that right and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations.'

27. The said principle was followed in Super Forgings & Steels (Sales) (P) Ltd., v. Thyabally Rasuljee (1995)1 SCC 410), wherein it is stated as follows:

> "The power of this Court in an appeal under Article 136 of the Constitution to take cautious cognizance of events and developments subsequent to institution of eviction proceeding and grant, deny or mould the relief sought by a party in consonance with justice and fair play is not restricted merely because it is exercising its power to deal with an appeal conferred upon it by the Constitution."

28. The same principle was reiterated in Kamleshwar Prasad v. Pradumanju Agarwal (1997) 4 SCC 413. In that case also The Hon'ble Division Bench of the Supreme Court held that 'even subsequent event of death of the landlord who wanted to start a business in the tenanted premises is not sufficient to dislodge the bona fide need established by him earlier.' The following was also observed:-

> "That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of the law, it must be that on the day of application for eviction which is the crucial date,

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the tenant incurred the liability of being evicted from the premises. (underline now made) Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son."

29. In Hasmat Rai v. Raghunath Prasad (1981) 3 SCC 103 it was emphasized that subsequent events should have "wholly satisfied" requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below:

"Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events."

30. In Gulabbai Vs. Nalin Narsi Vohra (1991-3-SCC 483)an order of eviction was passed on the ground of bona fide need. Subsequent event of shifting family of landlord to a spacious Bungalow constructed by him, during the pendency of appeal, was considered, by the appellate Court and it was found that landlord's requirement was wholly satisfied and then no more bona fide requirement and order of eviction was reversed.

31. But in this case, there is no question of full satisfaction by the Respondents (L.Rs.) of the erstwhile claim made by the original landlord; nor is that they are disqualified in maintaining that claim. Further their assertion is that they inherited by operation of statute the very goodwill and vested interest of the business run by their predecessor, in whose favour existed a decree of eviction, which was liability incurred by the appellant, and which liability exists even against these respondents, with inability of appellant to dislodge by showing that Respondents do not require the building factually.

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32. In the case of similar nature where the pendency of a lis for a record period of several decades transformed a middle-aged landlord to an advanced stage of gerenry (sic geriatry) and at that stage he could not start a new business venture. After lamenting over the system which caused a whopping delay of thirty-one years The Hon'ble Division Bench of the Supreme Court in Ansuyaben Kantilal Bhatt v. Rashiklal Manilal Shah (1997) 5 SCC 457 observed that the son of the landlord who by that time had four-and-a-half years more to go for reaching the superannuation age could consider the petitioned father's desire to start the business in the tenanted premises after retirement.

33. As a matter of fact the Division Bench of the The Hon'ble Supreme Court in Gayaprasad's case (supra) further added, 'as an epilogue the similar types of very old cases filed some decade ago can provide a catalytic agent for the High Courts to evolve some concrete schemes for winching to the fore similar long-pending matters, lying in torpidity at the bottom of the crammed list of pending cases in the High Courts; It is worth considering whether a cell can be set up in each of such High Courts where the piles of backlog are stirring problem, to pick out such cases to be brought to the notice of the Chief Justice of the High Court concerned so that he could take appropriate steps in the matter.'

34. The case on hand is also one such where R.C.O.P. was filed in the year 1991, the trial Judge passed his order in 1994 and the R.C.A. was ordered in 2004 and C.R.P. after having been filed in 2004, this Court fixed a date for its hearing considering its old nature.

35. The liability of tenant to vacate may get continued even if the L.Rs. were bona fide found to have a right to continue the said business. This aspect was dealt with in a case of Vijayaraghavan v. Mohammed Yakub Rowther (1976 I MLJ 123) (supra) which found favour in Kamleshwar Prasad v. Pradumanju Agarwal (1997) 4 SCC 413), wherein it was observed as follows:-

> "…That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the

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pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder (sic other) son."

36. Further while the Rent Control Legislation has given number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction, which is contained in almost all the Rent Control Acts in the country, is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. This was so fortified in a decision of Kewal Singh v. Smt.Lajwanti (1980)1 S.C.C. 290)

37. As and when bona fide of claim was establishsed, the the Court went to grant the same even when the application was not granted on it. In P.Sriramamurthy v. Vasantha Raman (1997) 9 SCC 654, an order of eviction was passed in favour of the landlord and against the tenant on the ground of non-payment of rent. During the pendency of appeal before this Court, husband of the landlady retired from service and they needed the premises for personal occupation also. Though the ground was not set up earlier, taking note of subsequent event, this Court allowed the ground to be raised and granted the relief.

38. Thus, subsequent events pleaded and highlighted by the appellants are insufficient to overshadow the bona fide need concurrently found by the fact-finding courts. The appellant/tenant incurring a liability of being evicted from the premises by virtue of the concurrent orders of the Courts below and the circumstance that he is not able to disprove the claim of the present respondents/landlords who are the L.Rs. of the original landlord coupled with the fact that ipso facto these respondents inherited the business of their father as an asset in order to continue with its goodwill and their expression of the proposal and readiness to continue the same will make the claim for own occupation as a bona fide one.

39. As pointed out in Gaya Prasad's case (2001) 2 SCC 604 (supra) it would be pernicious and unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of litigation, since only the proceedings prolonged for fifteen long years (1991-2006). However, the bona fide of claim persists.

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40. For the aforesaid reasons, there is no merit in this Civil Revision and is dismissed accordingly. There will be no order as to costs. Consequently, connected C.M.P. is closed. Time for eviction Three Months.

gr.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Registrar, Court of Small Causes, Chennai.

+ one cc to Mr.P.B.Ramanujam, Advocate Sr.No.266.
+ one cc to Mr.Adrian D.Rozario, Advocate Sr.No.426.

NG (CO)
RSM/12.1.2006

PRE DELIVERY ORDER IN
C.R.P.(NPD)NO.2476 OF 2004

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